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Attorneys for Defendant
MEDITERRANEAN SHIPPING COMPANY, S.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LIBERTY MUTUAL GROUP INC.
as subrogee of BODGER SEEDS, LTD.,

Plaintiff,

- against -

MEDITERRANEAN SHIPPING COMPANY S.A.,

Defendant,
-----X

ECF CASE

08 Civ. 00223 (JSR)

**COUNTER STATEMENT
TO PLAINTIFF'S RULE 56.1
STATEMENT OF FACTS**

Defendant MEDITERRANEAN SHIPPING COMPANY, S.A. ("MSC"),

by its attorneys Lyons & Flood, LLP, submits, pursuant to Rule 56.1 of this Court's

Local Civil Rules, a Counter Statement of Facts in response to plaintiff's Rule 56.1

Statement of Facts.

1. Admitted.
2. Admitted.
3. Admit that 648 bags of flower seeds were stored in container

number MSCU1550902 with seal number 1760518.

4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.

8. Admitted.

9. Defendants deny that plaintiff has produced sufficient evidence to prove that the seeds were shipped completely dry and in good condition. The affidavit of Angelina Mbega is insufficient as it does not affirm that Ms. Mbega personally observed the condition of the seeds or was present during their loading into the dry container.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

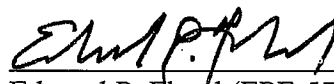
19. Defendants deny that the cargo damage necessarily occurred in transit during the ocean voyage because, as denied in Paragraph 9 above, plaintiff has not produced sufficient evidence to prove that the seeds were shipped completely dry and in good condition.

20. Admitted.

21. Admitted.

Dated: New York, New York
August 19, 2008

LYONS & FLOOD, LLP
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MEDITERRANEAN SHIPPING
COMPANY S.A.



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